

**OPINION
45-264**

June 25, 1945 (OPINION)

SPECIAL TRUST FUND

RE: Sales Tax

Your letter of June 22 addressed to the Attorney General has been received and contents of same have been noted.

You inquire relative to the allocation of the revenues of the sales tax fund. Section 57-3932 of the North Dakota Revised Code of 1943 provides that all moneys collected and received thereunder shall be paid into the state treasury and shall be credited by the state treasurer into a special fund to be known as the "Retail Sales Tax Fund." Out of this fund the state treasurer first shall provide for the payment of refunds allowed thereunder. The net amount of funds remaining therein constitutes a special trust fund to be used and disbursed solely as follows:

Seven-twelfths of said trust fund shall be used and disbursed for the payment of appropriations made pursuant to the state equalization fund law.

Second, the remaining five-twelfths of said trust fund are to be used and disbursed only for the payment of appropriations to be expended by the Public Welfare Board for the purposes authorized by law, but appropriations made by the general fund to be expended by the Public Welfare Board shall constitute and include appropriations from said five-twelfths share of said trust fund.

You inquire whether or not any balance remaining in said sales tax fund at the end of the 1943-45 biennium may be used for the purposes designated in said section 57-3932 for the biennium beginning July 1, 1945, and ending June 30, 1947, in addition to the appropriations made for said biennium.

The five-twelfths of the sales tax fund constitutes a special trust fund to be used only for the purposes therein designated. Said section, however, provides that any appropriations made from the general fund to be expended by the Public Welfare Board shall constitute and include appropriations from said five-twelfths share of said trust fund.

It is clear, therefore, that the funds available for the biennium beginning July 1, 1945, and ending June 30, 1947, cannot exceed the amount appropriated therefor by the 1945 Legislature. However, any balance remaining in the trust fund at the end of the 1943-45 biennium continues to be a trust fund, and the appropriation for the 1945-47 biennium from the general fund includes also any balance remaining in said trust fund at the end of the 1943-45 biennium. In other words, any balance remaining in the trust fund at the end of the 1943-45 biennium is a part of the appropriation made for the

1945-47 biennium.

NELS G. JOHNSON

Attorney General